

Date: July 10, 2008

Name of Appellant: Katharine Brady

Service Address: 45 Braintree Hill Office Park,
Suite 107
Braintree, MA 02184

In reference to: Lot D, Woodpecker Road
Stoughton, MA

Docket Number: 08-545

Property Address: Lot D, Woodpecker Road
Stoughton, MA

Date of Hearing: March 25, 2008

Enclosed please find a copy of the decision in the aforementioned appeal.

Sincerely:

BUILDING CODE APPEALS BOARD

Patricia Barry, Clerk

cc: Building Code Appeals Board
Building Official

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**Building Code Appeals Board
Docket No. 08-545**

Livio Marinelli,)
Appellant;)
)
v.)
)
Town of Stoughton,)
Appellee.)
)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Livio Marinelli (Appellant) asks the Board to review Appellee's alleged decision not to act on a building permit application to build a house at Lot D, Woodpecker Road, Stoughton. ("Property").

By letter dated January 7, 2008, Mary McNeil, Building Inspector for the Town of Randolph, acting on behalf of the Town of Stoughton ("Appellee") because of a potential conflict of interest, denied Livio Marinelli's request for a building permit, stating that the required zoning variance for lot dimensions had expired pursuant to G.L. c.40A, §10 and that the building permit application was deficient in other respects.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on March 25, 2008 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Attorney Katherine Brady of Marcus, Errico, Emmer & Brooks appeared on behalf of Appellant. Attorney Ilana Quirk of Kopelman and Paige, and Building Commissioner David Tonis appeared on behalf of Appellee.

Exhibits in Evidence

Exhibit 1: State Building Code Appeals Board Appeal Application Form, dated February 2, 2008, including supporting materials (Building permit application of Livi Marinelli dated September 12, 2007, decision of Randolph Building Commissioner Mary McNeil dated January 7, 2008, Stoughton Zoning Board decision filed August 10, 2006).

Findings of Fact

1. The Appellant applied for and was granted a variance by the Stoughton Zoning Board of Appeal on July 13, 2006. The variance was filed on August 10, 2006.
 2. The Appellant did not record the variance at the Registry of Deeds until September 4, 2007.
 3. The Appellant did not apply for a building permit until September 12, 2007.
 4. By operation of law, G.L. c.40A, §10, the rights granted by a variance expire in one year unless extended by written application.
 5. The Appellant did not apply for a six month extension as provided for in G.L. c.40A, §10, so the variance expired on August 10, 2007.
 6. The building permit application of the Appellant was given to the Building Commissioner of the Town of Randolph for review because the Appellant was suing the Building Commissioner of the Town of Stoughton. This created a potential conflict of interest under G.L. c.268, §23.
 7. The Building Commissioner of the Town of Randolph, Mary McNeil, acted on behalf of the Town of Stoughton and denied the permit application in a letter dated January 7, 2008. The letter stated:

I hereby deny the September 12, 2007 building permit application for Lot D, under 780 CMR (6th Edition) 105.3, 106.2, 111.1, 111.2 and 111.5, on the grounds that the application was incomplete for the reasons set forth below and that the Variance relied upon for zoning compliance has lapsed. I deny the application without prejudice, in the event that the owner of Lot D seeks and is issued a new variance and provides the missing information.
- The letter then listed several deficiencies in the permit application.
8. This appeal does not contest any of the substantive grounds for denial of the permit, only an alleged failure to act.
 9. The permit application was acted upon and denied, as is clear from the January 7, 2008 letter of Mary McNeil.

Decision

The issue is whether Stoughton has taken action on the Appellant's building permit application, and if not, whether they should be ordered to do so, pursuant to 780 CMR §111.1. Section 111.1 provides:

The building official shall examine or cause to be examined all applications for permits and amendments thereto within 30 days after filing thereof. If the application or the construction documents do not conform to the requirements of 780 CMR and all pertinent laws under the building official's jurisdiction, the building official shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of 780 CMR and all laws and ordinances applicable thereto, the building official shall issue a permit therefor.

The Board found that Appellee had in fact acted, as is clear from the January 7, 2008 letter of Mary McNeil. Since the Appellee acted on the permit, the appeal is rendered moot.

Conclusion

The Chair entertained a motion that the Board dismiss the appeal. The Board voted as indicated below.

X..... Dismissed

The vote was:

X.....Unanimous

Harry Smith

Keith Hoyle



Sandy MacLeod

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: July 10, 2008

Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing.

Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBRS/Department of Public Safety
One Ashburton Place – Room 1301
Boston, MA 02108